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**FILED**  
08/08/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0342-R-2021  
Lambert, Kathryn  
26.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: The Ranch At Dome Mountain LLC

OBJECTORS: The Ranch At Dome Mountain LLC

**CASE 43B-0342-R-2021**

43B 193665-00

43B 193666-00

43B 193667-00

43B 193669-00

43B 193670-00

43B 193671-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

Dome Mountain Ranch, claimant during the objection period, objected to each claim except 43B 193671-00. A late objection to each claim except 43B 193665-00 was filed in 1988 by attorney Leanne M. Schraudner on behalf of Thelma Gray and Ron Rigler. On March 26, 2021 the Order Dismissing Thelma Gray And Ron Rigler Objections Pursuant To Rule 22, W.R.Adj.R. was entered. On May 21, 2021 Dome Mountain Ranch LLC filed a Motion To Correct Claims To Resolve Objections And Issue Remarks. On August 27, 2021 an Order Staying Proceedings was issued as all of these claims were in the process of being transferred from Dome Mountain LLC to AMB West Holding Company. On January 11, 2022 an Order Granting Motions For Substitution And Extension of Stay was entered. AMD West Holding Company LLC was substituted for Dome Mountain LLC as claimant and as objector. On June 2, 2022 AMB West Holding Company, LLC's Amended Motion To Correct Claims To Resolve Objections And Issue Remarks ["Amended Motion To Correct"] was filed. On September 7, 2022 the Affidavit Of Ben Cunningham was filed. As the Court had questions about the requested changes, a scheduling conference was held to discuss the questions. On February 23, 2023 AMB West Holding Company, LLC's Notice Of Providing Additional Information ["Additional Information"] was filed.

In May 2022 these claims were transferred to The Ranch At Dome Mountain LLC. On August 15, 2022 The Ranch At Dome Mountain, LLC's Request To Update Caption was filed. It requests the substitution of The Ranch At Dome Mountain LLC be substituted for AMB West Holdings as both claimant and objector. On May 17, 2023 the Order Granting Motion To Update And Order Setting Filing Deadline was issued. The filing deadline was for The Ranch At Dome Mountain endorsement of the settlement documents filed by AMB West Holding Company LLC and for an answer to the Court's question about adding a local name for the Upper Reservoir. The June 6, 2023 The Ranch At Dome Mountain, LLC's Response To Request And Request For Extension states that a local name should not be added to the Upper Reservoir. On June 8, 2023 The Ranch At Dome Mountain, LLC's Notice Of Filing Statement Of Endorsement was filed.

It is clear from the text in the June 2, 2022 Amended Motion To Correct that the

changes identified in the May 21, 2021 Motion To Correct are sometimes confirmed and other times modified or rejected. The Amended Motion To Correct and the documents filed after that are the sources of all changes recommended in this Master's Report. The Amended Motion To Correct includes requested changes to the flow rates of claims 43B 193665-00 and 43B 193669-00 which were not at issue. This is deemed a motion to amend the flow rate of these two claims pursuant to section 85-2-233(6), MCA. The settlement documentation is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to or amending their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. Irrigation claim 43B 193665-00 appeared in the Preliminary Decree with 420.00 acre-feet for the volume and the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 2625 TIMES THE CAPACITY OF THE RESERVOIR.

The Amended Motion To Correct states that the reservoir stores some water but water also flows through the reservoir into a ditch for irrigation. The volume quantity should not be changed. The following clarification remark should be added: VOLUME INCLUDES STORED WATER IN THE RESERVOIR AS WELL AS FLOW THROUGH THE RESERVOIR FOR IRRIGATION. The Amended Motion To Correct requested “NATURAL FLOW THROUGH” in this remark but this is an offstream reservoir so there is no “natural flow through” like there can be in an onstream reservoir. The issue remark should be removed as addressed and resolved.

The Preliminary Decree states that the source is UNNAMED TRIBUTARY OF YELLOWSTONE RIVER and the source type is SURFACE WATER. The source name should be SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER and the source type should be GROUNDWATER. The following clarification remark should be added: ALSO KNOWN AS SMITH’S SPRING.

The Preliminary Decree states that the point of diversion, means of diversion, period of diversion, and reservoir record are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NENWNW	10	7S	7E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

SWNWNW	10	7S	7E	PARK
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Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: DAM

Reservoir: ONSTREAM

NENWNW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #2

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.04 ACRES

Capacity: 0.16 ACRE-FEET

The point of diversion, means of diversion, period of diversion, and reservoir record should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NENWNW	10	7S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING AND PIPELINE

SECONDARY SWNWNW 10 7S 7E PARK  
Period of Diversion: JANUARY 1 TO DECEMBER 31  
Diversion Means: DAM

Reservoir: OFFSTREAM Name: LOWER RESERVOIR (VANESSA'S POND)  
W2NW 10 7S 7E PARK  
Diversion to Reservoir: DIVERSION #2  
Dam Height: 16.00 FEET  
Depth: 13.00 FEET  
Surface Area: 9.00 ACRES  
Capacity: 46.80 ACRE-FEET

The change to flow rate requested in the Amended Motion To Correct arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the original Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

The Preliminary Decree states the following for the flow rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. As stated above, this claim involves an offstream reservoir rather than an onstream reservoir. The remark should be removed and replaced with the claimed flow rate – 1.00 CFS.

The Preliminary Decree also includes the following remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks provide notice of these changes made prior to issuance of the Preliminary Decree. The remarks should be removed as having served their notice purposes.

2. Irrigation claim 43B 193666-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 20.00 GPM PER ACRE.

A LATE OBJECTION HAS BEEN FILED TO THE SOURCE OF THIS WATER RIGHT CLAIM. IT WILL BE

RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The Preliminary Decree states that the flow rate is 3.75 CFS. A flow rate 3.00 GPM per acre over the 17.00 GPM per acre guideline for a place of use totaling 85.00 acres, is trifling and need not be addressed further. The flow rate should not be changed. The remark should be removed.

The Preliminary Decree states that the source is Sheep Creek. The Rigler Ditch point of diversion is on Sheep Creek, below the confluence of Sheep Creek and Garden Creek. The Decree entered December 7, 1909 in Cause No. 2816, *C. H. Brumfield v. A. J. Dailey et al.*, includes the Brumfield June 20, 1907 150.00 miner's inch right. A copy of the Decree is attached to the Additional Information as Exhibit F. The Decree identifies six water rights. The portion of the Decree dated October 29, 1909 states that the source for this Brumfield June 28, 1907 right is only Garden Creek. Three other rights each have a different single source listed. Two other rights have both "Garden and Sheep Creeks" listed as their sources (the Dailey and Seaton rights). The portion of the Decree dated December 7, 1909 includes an unattributed handwritten insert - "and Sheep" - added to the source for the Brumfield right. It is noted that the text concerning the Brumfield right does not include the text included for the Dailey and Seaton rights describing their diversions from the combined sources of Garden and Sheep Creeks after the same had joined in one channel. However, this portion later describes the Brumfield diversion (now known as Rigler Ditch) diverting water a short distance below "the point of union" of Sheep Creek and Garden Creek. It is clear this text is meant to memorialize that Sheep Creek and Garden Creek water are combined in the Brumfield right like they are in the Dailey and Seaton rights. It is clear the parties and the judge in that proceeding found it necessary to describe the source(s) in this manner. As requested, a clarification remark can be added. The requested text has been modified by using the text from the Decree to memorialize its apparent intent: THE DECREE ENTERED IN CAUSE NO. 2816, SIXTH JUDICIAL DISTRICT, DATED 12/07/1909, DECREES THE SOURCE AS THE COMBINED SOURCES OF GARDEN CREEK AND SHEEP CREEK AFTER THE SAME HAVE JOINED IN ONE CHANNEL. The late objection remark should be removed as having served its notice purpose.

The Preliminary Decree states that the point of diversion, means of diversion, period of diversion, and reservoir record are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESW	2	7S	7E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: RIGLER DITCH

Reservoir: ONSTREAM

SWSESW	2	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

The point of diversion, means of diversion, period of diversion, and reservoir records should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESW	2	7S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: RIGLER DITCH

Reservoir: OFFSTREAM      Name: UPPER RESERVOIR

NENE	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Depth: 10.00 FEET

Surface Area: 8.20 ACRES

Capacity: 41.00 ACRE-FEET

Reservoir: OFFSTREAM      Name: MIDDLE RESERVOIR (THELMA'S POND)

NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 20.00 FEET

Depth: 18.00 FEET

Surface Area: 33.00 ACRES

Capacity: 237.60 ACRE-FEET

Reservoir: OFFSTREAM      Name: LOWER RESERVOIR (VANESSA'S POND)

W2NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 9.00 ACRES

Capacity: 46.80 ACRE-FEET

The issue remark concerning the existence of the reservoir should be removed as addressed

and resolved.

The Preliminary Decree also includes the following remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark provides notice of this change made prior to issuance of the Preliminary Decree.

The remark should be removed as having served its notice purpose.

3. Irrigation claim 43B 193667-00 appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE SOURCE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.  
EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The Preliminary Decree states that the source is Sheep Creek. The Rigler Ditch point of diversion is on Sheep Creek, below the confluence of Sheep Creek and Garden Creek. The Decree entered December 7, 1909 in Cause No. 2816, *C. H. Brumfield v. A. J. Dailey et al.*, includes the R. H. D'Ewart May 1, 1887 60.00 miner's inch right. A copy of the Decree is attached to the Additional Information as Exhibit F. However, unlike the Brumfield right discussed above, in both the October 29, 1909 and December 7, 1909 portions of the Decree, only one source is identified for this 1887 D'Ewart right: a tributary of Garden Creek (also described as the west or south branch of Garden Creek). As the source now claimed is Sheep Creek, it appears the point of diversion changed at some time after the Decree was issued. Regardless, the text of the Decree is clear: the D'Ewart 1887 right is not one of the three rights described in the Decree as having the combined flow of Sheep Creek and Garden Creek as its source. The requested clarification remark concerning the 1909 Decree should not be added to this claim. The late objection remark should be removed as having served its notice purpose. It is noted that the Additional Information states that the claimant "recognizes that the inclusion of the proposed source informational remark will have no impact on the physical water use nor any impact in the event of future enforcement of the Sheep Creek system . . . and is willing to forgo the proposed informational remark if the Water Master determines the remark is not applicable."



The Preliminary Decree states that the point of diversion, means of diversion, period of diversion, and reservoir record are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESW	2	7S	7E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: RIGLER DITCH

Reservoir: ONSTREAM

SWSESW	2	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

The point of diversion, means of diversion, period of diversion, and reservoir records should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESW	2	7S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: RIGLER DITCH

Reservoir: OFFSTREAM      Name: UPPER RESERVOIR

NENE	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Depth: 10.00 FEET

Surface Area: 8.20 ACRES

Capacity: 41.00 ACRE-FEET

Reservoir: OFFSTREAM      Name: MIDDLE RESERVOIR (THELMA'S POND)

NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 20.00 FEET

Depth: 18.00 FEET

Surface Area: 33.00 ACRES

Capacity: 237.60 ACRE-FEET

Reservoir: OFFSTREAM      Name: LOWER RESERVOIR (VANESSA'S POND)

W2NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 9.00 ACRES

Capacity: 46.80 ACRE-FEET

The issue remark concerning the existence of the reservoir should be removed as addressed and resolved.

The Preliminary Decree also includes the following remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark provides notice of this change made prior to issuance of the Preliminary Decree.

The remark should be removed as having served its notice purpose.

4. Stockwater claims 43B 193669-00, 43B 193670-00, and 43B 193671-00 are each based on the same appropriation but claim different points of diversion and places of use. Claim 43B 193669-00 is for the Middle Reservoir (Thelma's Pond) and its place of use. Claim 43B 193670-00 is for the Lower Reservoir (Vanessa's Pond) and its place of use. Claim 43B 193671-00 is for the Upper Reservoir and its place of use. The three claims should be combined into a single claim. Claim number 43B 193669-00 should be used for the combined claim.

5. Stockwater claim 43B 193669-00 appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE SOURCE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 2 TIMES THE CAPACITY OF THE RESERVOIR.

This claim is also for the Brumfield June 28, 1907 150.00 miner's inch right decreed in Cause No. 2816, *C. H. Brumfield v. A. J. Dailey et al.*, (December 7, 1909). For the same reasons detailed in Finding of Fact 2 above concerning claim 43B 193666-00, the following clarification remark should be added to the source: THE DECREE ENTERED IN CAUSE NO. 2816, SIXTH JUDICIAL DISTRICT, DATED 12/07/1909, DECREES THE SOURCE AS THE COMBINED SOURCES OF GARDEN CREEK AND SHEEP CREEK AFTER THE SAME HAVE JOINED IN ONE CHANNEL. The late objection remark should be removed as having served its notice purpose.

The Preliminary Decree does not include a quantified volume. The volume issue remark is not relevant and should be removed.

The Preliminary Decree states that the states that the point of diversion, means of diversion, and reservoir record are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2NENW	10	7S	7E	PARK

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Reservoir: ONSTREAM

N2NENW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 21.66 ACRES

Capacity: 86.64 ACRE-FEET

The point of diversion, means of diversion, and reservoir records should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESW	2	7S	7E	PARK

Diversion Means: HEADGATE

Ditch Name: RIGLER DITCH

Reservoir: OFFSTREAM Name: UPPER RESERVOIR

NENE	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Depth: 10.00 FEET

Surface Area: 8.20 ACRES

Capacity: 41.00 ACRE-FEET

Reservoir: OFFSTREAM Name: MIDDLE RESERVOIR (THELMA'S POND)

NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 20.00 FEET

Depth: 18.00 FEET

Surface Area: 33.00 ACRES

Capacity: 237.60 ACRE-FEET

Reservoir: OFFSTREAM Name: LOWER RESERVOIR (VANESSA'S POND)

W2NW	10	7S	7E	PARK
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Diversion to Reservoir: DIVERSION #1

Dam Height: 16.00 FEET

Depth: 13.00 FEET

Surface Area: 9.00 ACRES

Capacity: 46.80 ACRE-FEET

The Preliminary Decree states that the place of use for this claim is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
E2NWNW	10	7S	7E	PARK
NENW	10	7S	7E	PARK

Combining the places of use for all three claims, including the modifications requested in the Amended Motion To Correct, results in the following composite place of use:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2SESE	3	7S	7E	PARK
E2E2NE	9	7S	7E	PARK
N2NENE	10	7S	7E	PARK
NWNE	10	7S	7E	PARK
NW	10	7S	7E	PARK
W2NW	10	7S	7E	PARK

However, the combined place of use requested in the Additional Information includes some variations in the legal descriptions plus additional places of use:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SW	3	7S	7E	PARK
SE	4	7S	7E	PARK
E2	9	7S	7E	PARK
N2	10	7S	7E	PARK
	16	7S	7E	PARK
NE	20	7S	7E	PARK
W2NW	21	7S	7E	PARK

The objections to claims 43B 193669-00 and 43B 193670-00 include place of use, stating that the place of use should “cover the location of the reservoir and creek.” Paragraph 11 of the Affidavit of Ben Cunningham (Exhibit J of the Amended Motion To Correct) states:

Historically and currently, both the Middle Reservoir and the Lower Reservoir have been stocked and maintained for fish habitat. Livestock have also historically utilized the Upper Reservoir, Middle Reservoir, and the Lower Reservoir, as well as the Rigler Ditch from Sheep Creek through the system of reservoirs, as sources of stock water.

The marked aerial photograph highlighting the reservoirs and ditch system from which the stock water (Exhibit E attached to the Additional Information) confirms the requested place of use legal descriptions include all the identified stock watering locations. There is no issue with

the place of use requested in the Additional Information being greater than just the combined places of use for the three claims as requested in the June 2, 2022 Amended Motion To Correct.

The place of use for claim 43B 193669-00 should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SW	3	7S	7E	PARK
SE	4	7S	7E	PARK
E2	9	7S	7E	PARK
N2	10	7S	7E	PARK
	16	7S	7E	PARK
NE	20	7S	7E	PARK
W2NW	21	7S	7E	PARK

The change to flow rate requested in the Amended Motion To Correct arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the original Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

The Preliminary Decree states at the flow rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE. As stated above, this claimed right is diverted into Rigler Ditch and involves three offstream reservoirs. The flow rate should be quantified. The remark should be removed and replaced with the claimed flow rate – 3.75 CFS.

The Preliminary Decree also includes the following remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks provide notice of these changes made prior to issuance of the Preliminary Decree. The remarks should be removed as having served their notice purposes.

6. Claims 43B 193670-00 and 43B 193671-00 should be dismissed as now combined

into claim 43B 193669-00.

#### CONCLUSIONS OF LAW

1. The requested flow rate amendments for claims 43B 193665-00 and 43B 193669-00 do not adversely affect other water rights as they are restorations of the historical flow rates which were decreed for the claimed rights in 1909. The historical and claimed flow rates were removed from the abstracts because the claims were described as having onstream reservoirs. Both claims are first diverted by ditch, then flow through a series of three offstream reservoirs. Including these historical flow rates does not adversely impact other water users as they make no changes to the actual historical use of the claimed rights on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. Each requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The settlement documents filed by the claimant, including the motion to amend, are sufficient to contradict and overcome the prima facie claims as they appeared in the Preliminary Decree and sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the motion to amend the flow rate of claims 43B 193665-00 and 43B 193669-00 and make the changes to all of the claims specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

Service Via Email:

Peter G. Scott

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Bozeman, MT 59718

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193665-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THE RANCH AT DOME MOUNTAIN LLC  
% DMS NATURAL RESOURCES LLC  
602 S FERGUSON AVE STE 2  
BOZEMAN, MT 59718

**Priority Date:** MARCH 1, 1930

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.00 CFS

**Volume:** 420.00 AC-FT

VOLUME INCLUDES STORED WATER IN THE RESERVOIR AS WELL AS FLOW THROUGH THE RESERVOIR FOR IRRIGATION

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 156.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

**Source Type:** GROUNDWATER

ALSO KNOWN AS SMITH'S SPRING

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNW	10	7S	7E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

2 - SECONDARY		SWNWNW	10	7S	7E	PARK
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

THE POINT OF DIVERSION IN THE NENWNW SEC 10 TWP 7S RGE 7E ALSO USES A PIPELINE AS MEANS OF DIVERSION.

**Reservoir:** OFFSTREAM **Reservoir Name:** LOWER RESERVOIR (VANESSA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 2

**Dam Height:** 16.00 FEET

**Depth:** 13.00 FEET

**Surface Area:** 9.00 ACRES

**Capacity:** 46.80 ACRE-FEET



**Period of Use:** APRIL 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		W2SE	9	7S	7E	PARK
2	5.00		S2NE	9	7S	7E	PARK
3	40.00		S2NW	16	7S	7E	PARK
4	10.00		S2NENW	16	7S	7E	PARK
5	16.00		W2SWNE	16	7S	7E	PARK
6	60.00		E2NE	20	7S	7E	PARK
<b>Total:</b>	156.00						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

193664-00

193665-00

193667-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193666-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THE RANCH AT DOME MOUNTAIN LLC  
% DMS NATURAL RESOURCES LLC  
602 S FERGUSON AVE STE 2  
BOZEMAN, MT 59718

**Priority Date:** JUNE 28, 1907

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.75 CFS

**Volume:** 540.00 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 85.00

**Source Name:** SHEEP CREEK

**Source Type:** SURFACE WATER

THE DECREE ENTERED IN CAUSE NO. 2816, SIXTH JUDICIAL DISTRICT, DATED 12/07/1909, DECREES THE SOURCE AS THE COMBINED SOURCES OF GARDEN CREEK AND SHEEP CREEK AFTER THE SAME HAVE JOINED IN ONE CHANNEL.

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	2	7S	7E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** RIGLER DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** UPPER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENE	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET

**Surface Area:** 8.20 ACRES

**Capacity:** 41.00 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** MIDDLE RESERVOIR (THELMA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 20.00 FEET

**Depth:** 18.00 FEET

**Surface Area:** 33.00 ACRES

**Capacity:** 237.60 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** LOWER RESERVOIR (VANESSA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 16.00 FEET

**Depth:** 13.00 FEET

**Surface Area:** 9.00 ACRES

**Capacity:** 46.80 ACRE-FEET

**Period of Use:** APRIL 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15.00		NW	3	7S	7E	PARK
2	55.00		SE	4	7S	7E	PARK
3	15.00		NWNE	9	7S	7E	PARK
<b>Total:</b>	85.00						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

193666-00      193668-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

193666-00      193669-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193667-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THE RANCH AT DOME MOUNTAIN LLC  
% DMS NATURAL RESOURCES LLC  
602 S FERGUSON AVE STE 2  
BOZEMAN, MT 59718

**Priority Date:** MAY 1, 1887

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.50 CFS

**Volume:** 105.00 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 156.00

**Source Name:** SHEEP CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	2	7S	7E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** RIGLER DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** UPPER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENE	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET

**Surface Area:** 8.20 ACRES

**Capacity:** 41.00 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** MIDDLE RESERVOIR (THELMA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 20.00 FEET

**Depth:** 18.00 FEET

**Surface Area:** 33.00 ACRES

**Capacity:** 237.60 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** LOWER RESERVOIR (VANESSA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 16.00 FEET

**Depth:** 13.00 FEET

**Surface Area:** 9.00 ACRES

**Capacity:** 46.80 ACRE-FEET

**Period of Use:** APRIL 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		W2SE	9	7S	7E	PARK
2	5.00		S2NE	9	7S	7E	PARK
3	40.00		S2NW	16	7S	7E	PARK
4	10.00		S2NENW	16	7S	7E	PARK
5	16.00		W2SWNE	16	7S	7E	PARK
6	60.00		E2NE	20	7S	7E	PARK
<b>Total:</b>	156.00						

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

193664-00

193665-00

193667-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193669-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** THE RANCH AT DOME MOUNTAIN LLC  
% DMS NATURAL RESOURCES LLC  
602 S FERGUSON AVE STE 2  
BOZEMAN, MT 59718

**Priority Date:** JUNE 28, 1907

**Type of Historical Right:** DECREED

**Purpose (use):** STOCK

**Flow Rate:** 3.75 CFS

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SHEEP CREEK

**Source Type:** SURFACE WATER

THE DECREE ENTERED IN CAUSE NO. 2816, SIXTH JUDICIAL DISTRICT, DATED 12/07/1909, DECREES THE SOURCE AS THE COMBINED SOURCES OF GARDEN CREEK AND SHEEP CREEK AFTER THE SAME HAVE JOINED IN ONE CHANNEL.

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	2	7S	7E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** RIGLER DITCH

**Reservoir:** OFFSTREAM **Reservoir Name:** UPPER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENE	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET

**Surface Area:** 8.20 ACRES

**Capacity:** 41.00 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** MIDDLE RESERVOIR (THELMA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 20.00 FEET

**Depth:** 18.00 FEET

**Surface Area:** 33.00 ACRES

**Capacity:** 237.60 ACRE-FEET

**Reservoir:** OFFSTREAM **Reservoir Name:** LOWER RESERVOIR (VANESSA'S POND)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2NW	10	7S	7E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 16.00 FEET

**Depth:** 13.00 FEET

**Surface Area:** 9.00 ACRES

**Capacity:** 46.80 ACRE-FEET

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	3	7S	7E	PARK
2			SE	4	7S	7E	PARK
3			E2	9	7S	7E	PARK
4			N2	10	7S	7E	PARK
5				16	7S	7E	PARK
6			NE	20	7S	7E	PARK
7			W2NW	21	7S	7E	PARK

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

193666-00

193669-00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK  
BASIN 43B**

**Water Right Number:**      **43B 193670-00**    STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:**      **DISMISSED**

**Owners:**                      THE RANCH AT DOME MOUNTAIN LLC  
                                      % DMS NATURAL RESOURCES LLC  
                                      602 S FERGUSON AVE STE 2  
                                      BOZEMAN, MT 59718

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):**                      STOCK

**Flow Rate:**

**Volume:**

**Source Name:**                      SHEEP CREEK

**Source Type:**                      SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:**      **43B 193671-00**    STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:**      **DISMISSED**

**Owners:**                      THE RANCH AT DOME MOUNTAIN LLC  
                                      % DMS NATURAL RESOURCES LLC  
                                      602 S FERGUSON AVE STE 2  
                                      BOZEMAN, MT 59718

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):**                      STOCK

**Flow Rate:**

**Volume:**

**Source Name:**                      SHEEP CREEK

**Source Type:**                      SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.